

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL LEE ROSE,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. 06-370-JJF
	:
CORRECTIONAL MEDICAL SERVICES,	:
INC., and DR. NIAZ,	:
	:
Defendants.	:
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**MEMORANDUM OPINION**

December 15, 2009  
Wilmington, Delaware

  
Farnan, District Judge

Pending before the Court is the Motion of Defendants, Correctional Medical Services and Dr. Muhammed A. Niaz, for Protective Order (D.I. 75). For the reasons discussed below, the Court will deny this motion.

#### **I. BACKGROUND**

On June 5, 2006, Plaintiff Michael Lee Rose ("Plaintiff"), an inmate at the Delaware Correctional Center ("DCC"), filed the present action under 42 U.S.C. § 1983 against Correctional Medical Services, Inc. ("CMS") and Dr. Muhammed A. Niaz ("Dr. Niaz"), as well as other defendants since dismissed. Briefly, Plaintiff, who has hepatitis C, alleges that CMS and Dr. Niaz (collectively, "Defendants") violated his Eighth Amendment rights by failing to provide him with necessary care for his serious medical condition. (D.I. 2.) Plaintiff's claims against Defendants partially survived Defendants' Motions to Dismiss (D.I. 18; D.I. 21), and he was permitted to amend his complaint to correct its deficiencies. Plaintiff filed his Amended Complaint on October 29, 2007. (D.I. 43.) Defendants responded to Plaintiff's initial requests for admissions on December 18, 2007 (D.I. 53; D.I. 54), and moved to dismiss again on June 10, 2008 (D.I. 61). Plaintiff, who initially filed pro se, obtained counsel on June 16, 2008. (D.I. 65.)

On August 6, 2008, Plaintiff's counsel sent a letter to Defendants' counsel via electronic mail and first class mail. (D.I. 69, Ex. A.) In this letter, apparently sent in response to Defendants' counsel's failure to send Plaintiff's counsel certain documents that she claimed he agreed to send her, Plaintiff's counsel describes in detail a number of interrogatories, requests for admissions, documents, and depositions Plaintiff seeks. (Id.) On August 11, 2008, Defendants' counsel replied, refusing to provide any of the documents Plaintiff's counsel requested on the ground that Plaintiff's counsel already had all she needed to respond to Defendants' Motion to Dismiss. (Id., Ex. B.) That same day, Plaintiff filed his Motion to Permit Limited Discovery. Defendants never filed an answering brief opposing this Motion, and the Court granted the Motion on September 8, 2008 ("the September 8 Order"). (D.I. 70.) In the September 8 Order, the Court also stayed Defendants' Motion to Dismiss pending completion of the limited discovery Plaintiff sought. (Id.) On September 16, 2008, Plaintiff served Defendants with his Second Set of Requests for Admission to Defendants Correctional Medical Services, Inc. and Dr. Niaz; Second Request for Production of Documents to Defendants Correctional Medical Services Inc. and Dr. Niaz; and Second Set of Interrogatories to Defendants Correctional Medical Services, Inc. and Dr. Niaz. (D.I. 71.) On October 7, 2008, Plaintiff served Defendants with his Third

Request for Production of Documents to Defendants Correctional Medical Services, Inc. and Dr. Niaz; and Third Set of Interrogatories to Defendants Correctional Medical Services, Inc. and Dr. Niaz. (D.I. 74.) Defendants did not respond to any of these requests, and on October 14, 2008, they filed the Motion for Protective Order currently pending before the Court, requesting that they not be required to respond to Plaintiff's pending discovery requests until their Motion to Dismiss is resolved.

## **II. THE PARTIES' CONTENTIONS**

Defendants contend that because Plaintiff's Amended Complaint "fails to allege sufficient facts to support a cognizable legal claim and fails to provide Defendants with fair notice of what Plaintiff's claim is and the grounds upon which those claims rest," they cannot reasonably answer Plaintiff's second and third sets of discovery. (D.I. 75 ¶ 13.) Specifically, Defendants argue that, in these circumstances, "Defendants would not know if the questions being asked by Plaintiff's counsel [in a requested deposition] are related to the case, or relevant or reasonably calculated to lead to the admissibility of discoverable evidence." (Id. ¶ 14.) Finally, Defendants contend that Plaintiff's discovery requests are not "limited," as contemplated by the September 8 Order, but are "substantive [requests] going far beyond what is needed to

respond to Defendants' Motion to Dismiss." (Id. ¶ 15.)

Plaintiff contends that Defendants' Motion for Protective Order should be denied for at least four reasons. First, Plaintiff argues that Defendants have waived their objection to discovery proceeding because they (1) refused to participate in a Rule 26(f) conference, and (2) failed to formally oppose Plaintiff's discovery attempts until after Plaintiff had served his discovery requests, even though Defendants knew the type of discovery Plaintiff sought well in advance of such time. (D.I. 77 ¶ 12(a)-(b).) Second, Plaintiff asserts that Defendants have not made the required demonstration of "good cause" for a stay of discovery. (Id. ¶ 13.) Third, Plaintiff argues that the discovery he seeks is necessary in order for him to respond to Defendants' Motion to Dismiss. (Id. ¶ 14.) Fourth, Plaintiff contends that since Defendants have commenced discovery in support of their defense, "[i]t is disingenuous for Defendants to . . . deny [Plaintiff] an opportunity to take discovery in support of his claims." (Id. ¶ 15.)

### **III. DECISION**

Federal Rule of Civil Procedure 26(c) allows parties to move the Court for protective orders in order to seal, limit, or otherwise restrict discovery. The rule provides, in pertinent part, "The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or

undue burden or expense . . . .” Fed. R. Civ. P. 26(c)(1). The “burden of persuasion [is] on the party seeking the protective order.” Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986). The party seeking a protective order “must show good cause by demonstrating a particular need for protection.” Id. Establishing “good cause” requires the movant to “specifically demonstrate[] that disclosure will cause a clearly defined and serious injury. Broad allegations of harm, unsubstantiated by specific examples, however, will not suffice.” Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995) (citing Pansy v. Borough of Stroudsburg, 23 F.3d 772, 786 (3d Cir. 1994)). Applying these principles in the present action, the Court concludes that Defendants’ Motion for Protective Order should be denied.

The purpose of the objected-to discovery is to allow Plaintiff to adequately respond to the Motion to Dismiss. Having already concluded that Plaintiff is entitled to more discovery in order to respond to the Motion to Dismiss, the Court cannot now conclude that the Motion to Dismiss precludes further discovery.

Defendants’ also contend that Plaintiff’s discovery requests go beyond the limited scope of the September 8 Order. (Id. ¶ 15.) A review of Plaintiff’s discovery requests (D.I. 71; D.I. 74) demonstrates that he seeks information and documents that fall within the scope of what his counsel indicated she sought

from Defendants in her August 6, 2008 letter. In fact, many of the inquiries contained in the discovery requests are copied verbatim from that letter.

#### **IV. CONCLUSION**

For the reasons discussed, the Motion of Defendants, Correctional Medical Services and Dr. Muhammed A. Niaz, for Protective Order (D.I. 75) will be denied.

An appropriate Order will be entered.